

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	Criminal No. 5:22-CR-122
)	
Plaintiff,)	JUDGE JOHN R. ADAMS
)	
v.)	
)	<u>DEFENDANT'S SENTENCING</u>
ANDREW JOHN DRABIC,)	<u>MEMORANDUM</u>
)	
Defendant.)	

Now comes the Defendant, Andrew John Drabic, by and through his undersigned counsel,
and hereby submits the following sentencing memorandum in the above-captioned matter.
Defendant's sentencing hearing is scheduled for November 8, 2022 at 12:00 p.m.

Respectfully submitted,

/s/ Edward J. Hartwig
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2022, a copy of Defendant's Sentencing Memorandum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ Edward J. Hartwig
Edward J. Hartwig (#0069792)

Counsel for Defendant

MEMORANDUM IN SUPPORT

I. STATEMENT OF FACTS

On March 17, 2022, Mr. Drabic was named in an eleven-count Indictment in the Northern District of Ohio. Mr. Drabic was charged with seven counts of Cyberstalking, three counts of Interstate Communication with Intent to Extort, and one count of Attempted Sexual Exploitation of a Child. On July 19, 2022, Mr. Drabic pled guilty to the eleven-count Indictment.

Mr. Drabic has accepted full responsibility for his actions by pleading guilty to the charges in the Indictment and has provided a heartfelt statement to the Court accepting responsibility for his actions. The actions surrounding this incident will not happen again as Mr. Drabic is remorseful and dedicated to making a better life for himself, his family, and those around him.

II. PERSONAL HISTORY AND CHARACTERISTICS

Personal History

Mr. Drabic is currently thirty-three (33) years old and is a lifelong resident of Ravenna, Ohio. Growing up, although Mr. Drabic was an intelligent and kind child, he had difficulties fitting in at school. A major aspect of this revolved around emotional and psychological issues.

Andy always seemed to be the “odd man out” in school and social settings. He was the one the bullies always picked on and we never quite understood why that was, but it affected him greatly to the point that he began withdrawing in social situations.

When Andy was a child, his father and I were very concerned with his emotional and psychological well-being. We took him to psychiatrists, psychologists, and counselors from the time he was nine years old. Not one took the time to properly diagnose him. They medicated him and talked at him, but never got to know him, so therefore years of “treatment” did no good.

Barbara Zaebst
Andrew Drabic’s Mother¹

¹ Mr. Drabic’s mother has written a letter to this Court on Mr. Drabic’s behalf. Her letter is attached as an exhibit to this memorandum and fully incorporated herein by specific reference.

The ongoing burden of Mr. Drabic's undiagnosed depression and anxiety led to him unfortunately attempting to take his own life on three separate occasions.

Andy attempted suicide at least three times around the time of his infractions and was generally mentally and emotionally unwell, but I didn't know how serious it was until the suicide attempts. He was hospitalized twice, but to no avail.

Barbara Zaebst
Andrew Drabic's Mother

As outlined in more detail below, gaining the tools necessary to manage his mental health is one of Mr. Drabic's goals while he is incarcerated.

Despite the many hardships Mr. Drabic had to endure throughout his life, he continued to be a loving, thoughtful, and loyal son and friend. The conduct he displayed that led to this case were uncharacteristic and should not negate the positive qualities he possesses.

Andy is a loving, thoughtful, and loyal son and friend. He always remembers special days for his father and me. He visited us regularly and helped us whenever he could. He is close with his uncles and aunts and always attended family get-togethers and holidays, often asking to bring friends along who had nowhere else to go for the day.

Barbara Zaebst
Andrew Drabic's Mother

One thing Mr. Drabic excelled in was photography. What started as a hobby soon turned into a profession.

Andy has a great talent as a photographer starting before age seven, the age at which he joined 4-H and represented his county at the Ohio State Fair with his photography project. He continued taking sports and news photos in high school and college and winning awards. He also took pictures for the Akron Aeros baseball team, some of which were used on championship posters, pennants and game schedules in the following year.

Barbara Zaebst
Andrew Drabic's Mother

Plans During and Following Incarceration

Mr. Drabic plans to use his time incarcerated on bettering himself and gaining the tools necessary to becoming a productive member of society. Mr. Drabic will maintain a job that will provide him with useful skills to use upon his release. He plans on completing courses to obtain a college degree in business. He also hopes to work with mental health professionals at the prison.

Once I get to the BOP, I plan to get a job that will provide skills to use upon my release. I also plan to complete a college degree in business to set myself up for success upon release. I also will get a proper diagnosis and help with my mental health to heal my brain. Combined with cognitive therapy and completing programs while in the BOP, this will eliminate any chance of recidivism. I will do everything I can to ensure that upon release, I will be a productive member of society and have a positive impact on the world.

Andrew Drabic²

Mr. Drabic has already started on his path to becoming a better person. In the eight months Mr. Drabic has been incarcerated, he has completed a number of courses offered at the Northeast Ohio Correctional Center, including courses on Anger Management, Behavior Change, Career Resources, Conflict Resolution, Entrepreneurship, Exercising, Expectations and Outcomes, Family and Community Reunification, Financial Literacy, Health Education, Healthy Coping Skills, Identification Package, Job Readiness, Peace Education Program, and Time Management.³

Following his release, Mr. Drabic plans to dedicate himself to making the world a better place.

Upon release, I will not only get a job, I will also find ways to help people and improve society. I firmly believe in spreading kindness and helping other. I will also continue to receive mental health treatment and therapy to maintain recovery from the struggles I have

² Mr. Drabic has written a letter to this Court for its consideration at sentencing. His letter is attached as an exhibit to this memorandum and incorporated herein by specific reference.

³ Certificates of Completion for the courses mentioned are provided as exhibits.

had with mental health throughout my life. I also will get on a good diet to help my mental and physical health.

Andrew Drabic

Acceptance of Responsibility

Mr. Drabic has accepted responsibility for his actions and is remorseful for the poor decisions he has made in his life. He acknowledges and understands his mistakes and is dedicating himself to make sure those mistakes do not happen again.

First of all, I would like to say I accept full responsibility for the offenses I committed. I am sorry for the pain I have caused and all of the people I have hurt. And I am sorry for all of the very inappropriate things I did and said. I wish I could take away the pain I have caused but I can only hope it can heal. What I have done will weigh on my conscience for the rest of my life, as it has done even prior to my arrest.

Again, I am sorry for all the awful things I have done. I harbor no animosity towards anyone and I hope the pain I have caused can heal quickly. I will do everything in my power to prevent this from happening again, and I would ask for forgiveness, mercy, and most importantly help getting healthy.

Andrew Drabic

III. LAW AND ARGUMENT

A. Current State of Sentencing Law in the Wake of *United States v. Booker* and its Progeny

Sentencing procedure underwent a fundamental change with the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). Whereas the Federal Sentencing Guidelines previously were virtually mandatory in nature, today they are "effectively advisory" in all cases. *Id.* at 245. The net result is that district courts must now impose a sentence that is "sufficient but not greater than necessary" to achieve the purposes of sentencing set forth in 18 U.S.C. §3553(a)(2). *See United States v. Foreman*, 436 F.3d 638, 644 n.1 (6th Cir. 2006). ("It is worth

noting that a district court's job is not to impose a 'reasonable' sentence. Rather, a district court's mandate is to impose a 'sentence, sufficient, but not greater than necessary, to comply with the purposes of section 3553(a)(2).').

The Supreme Court's directive that district courts are to impose sentences considering *all* of the sentencing criteria set forth in §3553 was made clear in its recent decision in *Gall v. United States*, 128 S. Ct. 586 (2007). In *Gall*, the Court established the following procedure that district courts are to follow when imposing sentence:

[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistence, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the §3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one. After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.

Id. at 6-97; *see also United States v. Gossman*, 513 F.3d 592, 596 (6th Cir. 2008) (“*Gall* shows that the sentence process involves an exercise in judgement, not a mathematical proof...”)

Importantly, the “sufficient but not greater than necessary” standard of §3553 test is no mere guideline. Rather, it sets an independent upper limit on the sentence that may be imposed by a Court.

B. Guideline Calculations

Based upon the Pre-Sentence Report, Mr. Drabic's Base Offense Level is 36. Count Group 1, which includes Count 1 of the Indictment, has an adjusted offense level of 20. Count Group 2,

which includes Counts 2 and 3 of the Indictment, has an adjusted offense level of 20. Count Group 3, which includes Counts 4 and 5 of the Indictment, has an adjusted offense level of 20. Count Group 4, which includes Counts 6 and 7, has an adjusted offense level of 20. Count Group 5, which includes Count 8, has an adjusted offense level of 18. Count Group 6, which includes Count 9, has an adjusted offense level of 20. Count Group 7, which includes Count 10, has an adjusted offense level of 18. Finally, Count Group 8, which includes Count 11, has an adjusted offense level of 36.

Pursuant to USSG §3D1.4(a), (b) and (c) and the multiple count adjustment, one unit is assigned to the group with the highest offense level, giving Count Group 8 one unit. The remaining Count Groups receive no units and are disregarded because they are 9 or more levels less serious than the adjusted offense level of 36 assigned to Group 8.

Mr. Drabic has accepted responsibility for his actions, and humbly asks this Honorable Court for a three-level (-3) reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a) and (b). Should this Honorable Court accept Mr. Drabic's request for a three-level (-3) reduction, it would make Mr. Drabic's Total Offense Level 33.

Mr. Drabic has a criminal history score of zero, which places him in Criminal History Category I.

C. Application of the Statutory Sentencing Criteria

1. § 3553(a)(1) – Nature and Circumstances of the Offense and History and Characteristics of the Defendant

Following §3553, the court is responsible for imposing a sentence that is “sufficient, but not greater than necessary,” and considers several factors when coming to a conclusive sentence. Those factors include the nature of the offense and the defendant's criminal history, the seriousness of the offense, deterrence of similar criminal conduct, protection of the public from the defendant, among others.

Mr. Drabic recognized the seriousness of the offenses and the impact his actions had on himself, the victims, the community, and his family, He is determined to lead a law-abiding life.

2. § 3553(a)(2)(A) – Reflect the Seriousness of the Offense, Promote Respect for the Law, and Provide Just Punishment

This Court is free to exercise the substantial discretion afforded to it under *Gall* to fashion an appropriate sentence.

Should Mr. Drabic serve a term of incarceration, it is respectfully requested the length of incarceration be tailored as to not be greater than necessary. However, it is understood that it may be necessary to incarcerate to promote respect for the law and to provide just punishment.

3. § 3553(a)(4) and (5) – Sentencing Guideline Considerations and Policy Statements

a. Family Ties and Responsibilities

U.S.S.G. §5H1.6 permits the Court to consider Mr. Drabic's family ties and responsibilities when considering an appropriate sentence within the applicable guideline range. Mr. Drabic has strong and supportive bonds with his parents who care deeply for him.

As mentioned above by specific reference and attached to this memorandum, a character letter from Mr. Drabic's mother expresses how much she loves and cares for him. The letter acknowledges the mistakes Mr. Drabic has made and how a strong reentry plan and a supportive family group can assist him in becoming the man she knows and loves. She prays Mr. Drabic can receive the help he needs to return home so he can begin a healthy and prolific path to becoming a productive member of society.

IV. CONCLUSION

Given the above reasons, Mr. Drabic is respectfully requesting the court consider all mitigating factors outlined in the Memorandum of Support when determining a sufficient sentence.

Mr. Drabic has pleaded guilty and fully accepts responsibility for his actions. He is determined to change his life for himself, his family, and the community.

For the foregoing reasons, counsel prays this Court consider a sentence that is fair, just, and reasonable.

Respectfully submitted,

/s/ Edward J. Hartwig

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